No. 5500

United States Circuit Court of Appeals

For the Ninth Circuit

GEORGE P. CLARK, Trustee in Bankruptcy of the Estate of EDNA G. MILENS,

Appellant

vs.

EDNA G. MILENS,

Appellee.

BRIEF OF APPELLANT

Upon Appeal from the United States District Court for the District of Oregon.

COAN & ROSENBERG,
710 Pittock Block, Portland, Oregon,
Attorneys for Appellant.

JAMES H. McMENAMIN,
Selling Building, Portland, Oregon,
Attorney for Appellee.

No. 5500

United States Circuit Court of Appeals

For the Ninth Circuit

GEORGE P. CLARK, Trustee in Bankruptcy of the Estate of EDNA G. MILENS,

Appellant

vs.

EDNA G. MILENS,

Appellee.

BRIEF OF APPELLANT

STATEMENT OF THE CASE

In this matter, Edna G. Milens was adjudged a bankrupt on the 3rd day of December, 1926.

On June 23rd of the following year, George P. Clark, her trustee in bankruptcy filed a petition praying that an order be made requiring the bankrupt to forthwith deliver

and pay over to him, as trustee in bankruptcy of her estate, the sum of $5,377.37 wilfully and intentionally concealed by her from the said trustee in bankruptcy.

Thereafter and on the 22nd day of July, 1927 based upon hearings before Hon. A. M. Cannon, Referee in Bankruptcy on said petition, an order was made and entered by said Referee requiring Edna G. Milens, bankrupt, to account for and pay over to George P. Clark, trustee in bankruptcy of the above entitled bankrupt's estate on or before five days from the date of said order, the sum of $5,377.37 belonging to said estate and which amount she had in her possession and under her control at said time and which was being fraudulently concealed from said trustee.

At said time, namely on the 22nd day of July, 1927, findings of fact were made and entered by said Referee A. M. Cannon, which findings among other things, stated as follows:

"V

The Referee further finds that the bankrupt, although given every opportunity to explain what has become of said money, has wholly failed to account for the use of said money or to give any plausible explanation as to the use thereof and the Referee finds that said sum of $5,377.37 was in the possession of the bankrupt at the date of the adjudication in bankruptcy herein and was and now is concealed by said bankrupt from her trustee in bankruptcy, George P. Clark.

VI

The Referee further finds that the said bankrupt, Edna G. Milens, now has in her possession said sum of $5,377.37, which she has failed and refused and still fails and refuses to account for or pay over to the trustee and which sum the Referee finds the bankrupt does now knowingly and fraudulently and wilfully conceal from her trustee in bankruptcy."

No appeal or review was taken from said findings of the Referee or from the order based thereon dated July 22nd, 1927 requiring the bankrupt to pay to her trustee the sum of $5,377.37.

Thereafter and on the 24th day of August,

1927, Hon. A. M. Cannon, Referee in Bankruptcy, filed his certificate in the United States District Court for the District of Oregon stating the fact that said Edna G. Milens had failed to comply with said order dated the 22nd day of July, 1927 and the further fact that the said Edna G. Milens was in contempt for failure to obey said order and recommending that she be punished for contempt until she had paid to her trustee the sum of $5,377.37.

That on the 17th day of March, 1928, there was duly made and filed in the District Court of the United States for the District of Oregon, an order to show cause why Edna G. Milens should not be punished for contempt for failure to obey the Referee's order.

That on the 26th day of March, 1928, there was filed in the District Court of the United States for the District of Oregon, an answer by the bankrupt to the order to show cause. Said answer, among other things, merely stated that she submits herself to the above

entitled court and throws herself wholly and completely upon the mercy of the Court, and for the first time and eight months after the date of the findings and the order of the referee, questions the correctness of the same and alleges, under oath, that she cannot comply with the order.

Based upon said order to show cause and the answer of the bankrupt, the matter was set for hearing on the question of the bankrupt's contempt for Monday, March 26, 1928. That at said hearing, the records of the referee were before the Honorable District Court but the bankrupt offered no testimony, made no showing as to the reason for her failure to obey the referee's order and the District Court, without any testimony or argument, took the matter under advisement.

Thereafter and on the 23rd day of April, 1928, Honorable R. S. Bean, rendered an oral opinion which has been transcribed and appears in the Transcript of Record, page 14, stating that an order discharging the bank-

rupt should be made, which order was entered on the 28th day of April, 1928, purging the bankrupt of her contempt and from which order this appeal is taken.

SPECIFICATIONS OF ERRORS RELIED UPON

THE FIRST ERROR ALLEGED is the failure of the District Court of the United States for the District of Oregon to accept and adopt the findings and order of the Referee based thereon requiring the bankrupt to turn over to her trustee, money in her possession wilfully and unlawfully concealed by her from her trustee in bankruptcy from which findings and order of the Referee, no review or appeal was taken by the bankrupt and which, as a consequence thereof, became a final judgment.

THE SECOND ERROR ALLEGED is the making of the order by the District Court of the United States for the District of Oregon purging the bankrupt of contempt for her

refusal to obey a final order requiring her to pay to her trustee in bankruptcy, the sum of $5,377.37 found to be in her possession and wilfully and fraudulently withheld from her trustee, although the bankrupt offered no testimony, made no showing and called no witnesses in the contempt proceeding.

POINTS AND AUTHORITIES

I

THE REFEREE'S ORDER TO TURN OVER CONCEALED ASSETS WHICH HAS NOT BEEN REVIEWED OR APPEALED FROM, IS A FINAL ORDER AND IN A PROCEEDING AGAINST THE BANKRUPT FOR CONTEMPT FOR FAILURE TO OBEY SAID ORDER, THE DISTRICT COURT WILL NOT EXAMINE THE EVIDENCE OR REVIEW THE ISSUES UPON WHICH THE ORDER WAS BASED, AS THE ONLY ISSUE BEFORE THE DISTRICT COURT IS THE QUESTION OF THE DISPOSITION OF THE PROPERTY BY THE BANKRUPT SINCE THE DATE OF

THE ORDER, THE BANKRUPT BEING ESTOPPED FROM DENYING THAT SHE WAS IN POSSESSION OF THE PROPERTY DIRECTED TO BE TURNED OVER.

7 Remington on Bankruptcy (3rd Ed.) page 89, Section 3043.

5 Remington on Bankruptcy (3rd Ed.) page 560, Section 2428.

In re Frankel (U.S.D.C.N.Y. So. Dis. 1911) 25 Am. B. R. 920, 922; 184 Fed. 539.

In re Weber Co. (U.S.C.C.A. 2nd Cir. 1912) 29 Am. B. R. 217, 219; 200 Fed. 404.

In the matter of Geo. Shelley (U.S.D.C. So. Dis. of Calif. 1925) 6 Am. B. R. (N.S.) 491, 493; 8 Fed. (2nd) 878.

United States Ex. Rel. Paleais v. Moore (U.S.C.C.A. 2nd Cir. 1923) 2 Am. B. R. (N.S.) 699, 707; 294 Fed. 852.

In the matter of Oriel & Confino (U.S. C.C.A. 2nd Cir. 1928) 11 Am. B. R. (N.S.) 363, 368; 23 Fed. (2nd) 409.

II

THE BURDEN OF PROOF IN A HEARING ON A CONTEMPT PROCEEDING IS UPON THE BANKRUPT TO SATISFACTORILY ACCOUNT TO THE DISTRICT COURT

FOR THE DISPOSITION OF ASSETS SINCE THE DATE OF THE REFEREE'S ORDER, AND SHE CANNOT ESCAPE AN ORDER FOR COMMITTAL BY SIMPLY DENYING, UNDER OATH, IN HER SWORN ANSWER TO THE RULE TO SHOW CAUSE THAT SHE HAS ANY ASSETS.

1 Collier on Bankruptcy (13 Ed.) page 996, Sec. 41.

1 Collier on Bankruptcy (13 Ed.) page 993, Sec. 41.

In re Meier (C.C.A. 8th Cir. 1910) 25 Am. B. R. 272, 275; 182 Fed. 799.

In re Deuell (U.S.D.C. Wes. Dis. Mo. 1900) 4 Am. B. R. 60, 62; 100 Fed. 633.

In Dittmar v. Michelson (U.S.C.C.A. 3rd Cir. 1922) 48 Am. B. R. 639, 643; 281 Fed. 116.

In Power v. Fuhrman (U.S.C.C.A. 9th Cir. 1915) 34 Am. B. R. 418, 421; 22 Fed. 787.

In the matter of George Shelley (U.S. D.C. So. Dis. Calif. 1925) 6 Am. B. R. (N.S.) 491, 494; 8 Fed. (2nd) 878.

In re Magen Co. Inc. (U.S.D.C. Ea. Div. of N.Y. 1926) 8 Am. B. R. (N.S.) 543, 547; 14 Fed. (2nd) 469.

In re Magen Co. Inc. (U.S.C.C.A. 2nd Cir. 1925) 7 Am. B. R. (N.S.) 283, 288; 10 Fed. (2nd) 91.

Reardon vs. Pensaneau (U.S.C.C.A. 8th Cir. 1927) 9 Am. B. R. (N.S.) 519, 520; 18 Fed. (2nd) 244.

ARGUMENT

From what has been stated, it will be readily observed that the appellant in this brief has condensed the assignments of error, being four in number as they appear in the Transcript of Record, pages 24 to 26 inclusive, to two main points for argument.

Briefly stated, the District Court in its oral opinion on the contempt proceeding, page 14 of the Transcript of Record to page 18 inclusive, placed an interpretation on the findings of the Referee not warranted by the findings themselves and from which findings and order based thereon no review or appeal was taken by the bankrupt. The District Court stated, page 16 of the Transcript of Record—"The findings of the Referee are not that the

bankrupt had in her possession any specific money or property belonging to the estate, which she was ordered to turn over to the trustee, but rather that she had received a certain sum of money during a given period, and was able to account for only a part thereof to the satisfaction of the Referee, and therefore that she must have the balance in her possession."

The conclusive findings of the Referee from which no appeal had been taken on this particular point, is as follows, page 6 of the Transcript of Record:

> "The Referee further finds that the said bankrupt, Edna G. Milens, now has in her possession said sum of $5,377.37, which she has failed and refused and still fails and refuses to account for or pay over to the trustee and which sum the Referee finds the bankrupt does now knowingly and fraudulently and wilfully conceal from her trustee in bankruptcy."

The appellant submits that the District Court erred in so interpreting the findings of the Referee contrary to their plain and ex-

press meaning and also by examining into the findings and order from which no review or appeal had been taken. In support of appellant's contention, he has formed his first point and submits the following authorities in support thereof.

7 Remington on Bankruptcy (3rd Ed.) page 89, Section 3043, states the rule as follows:

> "Although some decisions seem to indicate the contrary, it is on principle and by the weight of well-considered authority directly on the point, undoubtedly the true rule that, on contempt for disobedience of an order to surrender assets, the evidence on which the original order was based is not to be re-examined—for the way to correct erroneous orders for surrender of assets 'is by appeal, not by disobedience'."

5 Remington on Bankruptcy (3rd Ed.) page 560, Section 2428, states the rule as follows:

"On principle it would seem that, since the order to surrender assets may be granted only on convincing evidence or evidence beyond a reasonable doubt, the court, on contempt proceedings for failure to obey such order, ought not to go behind the order itself, if the order was not appealed from, and ought to take into consideration only facts arising subsequently thereto, leaving the propriety of the order itself remediable by appeal or petition for review, since otherwise the contempt proceedings would be diverted into an appeal from the order of the surrender itself."

In re Frankel (U. S. D. C. N. Y. So. Dis. 1911); 25 Am. B. R. 920, 922; 184 Fed. 539, District Judge Hand in speaking for the Court said:

"On the other hand, our own Circuit Court of Appeals, in Re Stavrahn (C.C.A., 2d Cir.), 23 Am. B. R. 168, 174 Fed. 330, 98 C. C. A., 202, proceeded upon the theory that the bankrupt upon such a proceeding must show that since the date of the order he had lost ability to comply with it, and that if he did not show that an order of

committal was proper. Although it is not expressly so stated, the reasoning appears to be based upon the understanding that the order concluded the controversy up to the date of its entry. The words used are that the order makes a prima facie case; but, of course, no judgment inter alios makes any case whatever and is immaterial. The reason why they did not say that it made a conclusive case was, I think, because the bankrupt might show that since the order he had parted with the funds. In addition, it is of much authoritative weight that it has undoubtedly been the practice in this district to treat such orders as conclusive estoppels upon the date of their entry, and to leave open to the respondent only the issue of showing what he has done with the money since that time."

In re Weber Co. (U.S.C.C.A. 2nd Cir. 1912) 29 Am. B. R. 217, 219; 200 Fed. 404, came up on a petition to revise an order of the District Court sitting in bankruptcy, which order adjudged one Max Weber to be in contempt of the bankruptcy court because of his disobedi-

ence of an order which directed him to deliver $7,000 to the trustee of the bankrupt's estate. Circuit Judge Lacombe, in speaking for the Court, said:

> "We think the conclusion of the district judge was correct; it was in strict conformity with the opinion of this court in the matter of Stavrahn (C.C.A., 2nd Cir.), 23 Am. B. R. 168, 174 Fed. 330. The petitioner had full opportunity before the referee to put in any proofs he might wish to as to whether or not he was then concealing the $10,000. Testimony was taken and upon it the referee found that on August 28th, 1911, he was concealing that sum. He made no opposition to this finding, did not seek to review it in any way, nor has he asked for a re-opening on the strength of new evidence or for any other reason. Surely there was nothing for the district judge to do except to assume that such finding was correct; it established prima facie that Weber had at one time $10,000 which he was secreting from the estate and his bare denial without corroborative proof was insufficient to overcome such prima facie case.
>
> Upon the application to punish for contempt he made no explanation as to how or why it was that this particular sum had disappeared, merely denying that he ever had it. His statement that he

had no money, when the proceeding for contempt was instituted, without some such explanation was insufficient and the judge quite properly held him on contempt for not paying it over. To excuse disobedience of the order by such general denial would make it easy to evade the requirements of the Bankruptcy Act."

In the matter of George Shelley (U.S.D.C. So. Dis. of Calif. 1925) 6 Am. B. R. (N.S.) 491, 493; 8 Fed. (2nd) 878, based upon the records and books of the bankrupt, the Referee found that there was at the time of bankruptcy a shortage of merchandise amounting to $82,328.60, and that the bankrupt failed to enter in his record the cash sales of merchandise which had cost him the said sum. After making fair and reasonable deductions the Referee found that the sum of $50,000 was in the hands and possession of and under the control of the bankrupt, and concluded as a matter of law that the

trustee in said bankrupt estate was entitled to an order directing the bankrupts to turn over to the trustee the said sum of $50,000 and made an order accordingly which was not obeyed and which the referee certified to the court requesting that the bankrupt be punished for contempt. District Judge Henning, in speaking for the Court said:

> "It appears from the record that neither the bankrupt, George Shelley nor either of his sons took any steps to review the order of the referee of February 24, 1925. Nowhere in the subsequent proceedings do they attempt to do anything except to say that they have not the money now, or the property, and that they never had it. Their counsel argues in an elaborate and capable brief that the court may not proceed in contempt against them without first trying the issues determined by the referee de novo. The attorney for the trustee in two briefs takes the position that the order of the referee not having been reviewed is a final judgment and that this court cannot review the facts upon which the order is based under contempt proceedings.
>
> The cases cited by counsel indicate that the courts are not wholly in harmony on the general propositions here involved.

Most of them deal with a radically different set of facts. The Bankruptcy Act, in section 2 and other sections, provides for a review of the orders of the referee. General Orders, Number 27 (Collier, 13th Ed., p. 1834), and Rule 84 of this court specifically set out the steps to be taken for the purpose of reviewing the acts of the referee. No such review having been taken in this case, it must be assumed that the finding of the referee and the order that the bankrupt and his sons turn over to the trustee the sum of fifty thousand dollars ($50,000) was well founded. If that order is not now reviewable by this court, then the only thing to be tried on this proceeding is the question of the disposition of this money by the bankrupt and his sons, since the time of the order made by the referee. At the hearing there was no effort or attempt on the part of the persons charged to do this. Their position simply was that they never received the money in question and are now not in possession of it. The assertion of present inability to turn over, without further explanation, apparently does not furnish any evidence of what has become of it.

Without passing upon the power of the court to try the facts de novo, under the record before me, I am of the opinion that good practice, proper procedure and the weight of judicial opinion does not call for such review in this case. In re

Frankel (D.C., N.Y.) 25 Am. B. R. 920, 184 F. 539; Power v. Fuhrman (C.C.A., 9th Cir.), 34 Am. B. R. 418, 220 F. 787.

It follows necessarily that the said George Shelley, Ben Shelley and Abe Shelley and each of them is now in contempt of this court and that a committal must issue. The warrant will be stayed for ten (10) days, in order that the bankrupt and his sons or either of them if they so wish, may forthwith take an appeal to the Circuit Court of Appeals. I am persuaded to do this in view of the fact that in this, the Ninth Circuit, there is no authoritative decision definitely settling the precise issues here involved."

In the matter of United States Ex. Rel. Paleais v. Moore, (U.S.C.C.A. 2nd Cir. 1923) 2 Am. B. R. (N.S.) 699, 707; 294 Fed. 852, Circuit Judge Rogers in speaking for the court said:

"In determining this question we do not sit to review the order of October 3, 1922, directing the relator to turn over the books and papers, or the order adjudging

him in contempt on March 22, 1923. If the order of March 22, 1923 adjudging the relator to be in contempt was erroneous, the remedy for a review of the validity of that order was by a petition to revise it. That order was made in a proceeding in bankruptcy within the meaning of section 24b of the Bankruptcy Act (Comp. St., Sec. 9608), which gives to this court jurisdiction to revise in matter of law 'the proceedings of the several inferior courts of bankruptcy' within our jurisdiction; and the order cannot be brought here for examination in any other way than by petition to revise. In the case of in re Shidlovsky (C.C.A., 2nd Cir.) 34 Am. B. R. 861, 224 Fed. 450, 140 C. C. A. 654, this court held that in such cases the only remedy is by petition to revise under section 24b. In Kirsner v. Taliaferro (C.C.A., 4th Cir.), 29 Am. B. R. 832, 202 Fed. 51, 120 C. C. A. 305, the Circuit Court of Appeals for the Fourth Circuit held that an order requiring a bankrupt to turn over property to his trustee, and committing him until he does so, is reviewable only by petition to revise. See, also, Freed v. Central Trust Co. (C.C.A., 7th Cir.) 33 Am. B. R. 64, 215 Fed. 873, 875, 132 C. C. A. 7; Henkin v. Fousek (C. C. A., 8th Cir.), 46 Am. B. R. 97, 267 Fed. 557; Horton v. Mendelsohn (C. C. A., 3rd Cir.), 41 Am. B. R. 648, 249 Fed. 185, 161 C. C. A. 221; Henkin v. Fousek (C. C. A., 8th Cir.), 40 Am. B. R. 701, 246 Fed. 285, 159 C. C. A.

15; Good v. Kane (C. C. A., 8th Cir.), 32 Am. B. R. 19, 211 Fed. 956, 128 C. C. A. 454. We are not aware of any case which asserts a contrary doctrine.

This court recently, in Ex. parte Craig, 282 Fed. 138, had occasion to consider at great length the right to employ the writ of habeas corpus as a method of examining into the validity of an order adjudging one guilty of a contempt of court and restraining him of his liberty as a punishment therefor. The conclusion to which we arrived in that case, and which we believe is amply sustained by the authorities, is that in a habeas corpus proceeding the appellate court examines only the power and authority of the lower court to act and not the correctness of its conclusions. The order restraining one of his liberty cannot be collaterally attacked in habeas corpus proceedings for errors and irregularities not affecting the jurisdiction. Adhering as we do to the doctrine therein announced, we hold that the only matter which can now be considered is the matter of the lower court's jurisdiction at the time it made the order adjudging the relator in contempt, and directing his confinement in the Raymond Street Jail until he purged himself of such contempt, or until the further order of the court. Since this opinion was handed down, this court's decision in the case of Ex. parte Craig, 282 Fed. 138, has been

> affirmed by the Supreme Court of the United States. Craig v. Hecht, 44 Sup. Ct. 103, 68 L. Ed.—"

In the Matter of Oriel & Confino (U.S.C.C. A. 2nd Cir. 1928) 11 Am. B. R. (N.S.) 363, 368; 23 Fed. (2nd) 409. The facts are that on October 22, 1926, an order was made directing the appellants to turn over to the receiver within three days, the books of account used by the bankrupts during the year 1925. No appeal was taken from this order and thereafter the present motion was made to punish them for contempt for failure to obey. An order has been entered below "committing them to jail, to be confined and detained for their alleged contempt in failing to comply with the terms of the order." Circuit Judge Manton, in speaking for the court, said:

> "The regularity, correctness or validity of the order disobeyed cannot be examined in this proceeding to punish. Even

if it was improvidently granted or irregularly obtained, it must nevertheless be respected until it is annulled by the proper authority. Cape May R. R. Co. v. Johnson, 35 N. J. Eq. 422. The only inquiry is whether the court granting the injunction had jurisdiction of the subject-matter and of the parties, and whether the order has been violated. Therefore, it was not incumbent upon the appellee in this proceeding, which we hold to be a civil contempt, to establish beyond a reasonable doubt that they had the books and continued in their possession, and are wilfully refusing to turn them over. That was a matter for determination on the motion in the turnover proceeding. In that proceeding it was determined that the appellants were able to deliver up the books in question, and that they had them either in their possession or under their control. No appeal was taken from the order. They must be committed until they can satisfy the court that they should be purged of the contempt committed, either by compliance with the order or some remedial relief be accepted, or otherwise satisfy the court that their committment should be lifted and they be released. Kirsner v. Taliaferro (C.C.A., 4th Cir.), 29 Am. B. R. 832, 202 F. 51."

The foregoing authorities amply indicate that the findings and order of the Referee requiring the bankrupt to turn over $5,377.37 to her trustee in bankruptcy was a final order and it was manifest error for the District Court to permit the bankrupt to accomplish by disobedience of said order, what she had failed to do by appeal.

Under point two of authorities, the rule has been stated in effect that it was error for the District Court to purge the bankrupt of contempt for her refusal to obey the final order requiring her to pay her trustee the sum of $5,377.37 found to be in her possession and fraudulently withheld from her trustee, regardless of the fact that she offered no testimony, made no showing and called no witnesses in the contempt proceeding.

The transcript of record discloses that all that appears of record in connection with the contempt proceeding is the rule to show cause why Edna G. Milens should not be

punished for contempt for failure to obey lawful order, Transcript of Record, page 7; the answer of the bankrupt to the rule to show cause why she should not be punished for contempt, Transcript of Record, page 9; the opinion of the District Court, Transcript of Record, page 14; and the order purging the bankrupt of contempt, Transcript of Record, page 18.

The District Court had before it the findings of fact of the referee dated July 22, 1927, the order of the referee dated July 22, 1927, and the referee's certificate of contempt for failure to obey lawful order dated the 24th day of August, 1927. At the hearing on the contempt proceeding held on March 26, 1928, the bankrupt called no witnesses, did not herself take the stand, offered no testimony of any kind whatsoever and made no affirmative showing as to why she should not be held for contempt for failure to obey the Referee's order.

The bankrupt submitted the matter en-

tirely upon her answer to the rule to show cause, Transcript of Record, pages 9 to 14 inclusive, which answer, as already stated in this brief, for the first time attempted to attack the findings and the order of the referee eight months after the same had been entered. The only material and pertinent allegation in said answer to the rule to show cause, being paragraph VI of the same, in which she alleges as follows:

> "Said bankrupt further alleges that she is wholly and completely financially embarrassed and has been for some time past, physically disabled."

In other words, the bankrupt sought to avoid punishment from her disobedient act by merely stating in effect that she is "wholly and completely financially embarrassed and has been for some time past, physically disabled."

With no other statement or testimony to guide the Court in its decision, the District Court of the United States for the District of Oregon purges the bankrupt of contempt.

That this is not the law and that the Court committed error is found in a great mass of texts and cases from which the appellant has selected the following:

1 Collier on Bankruptcy, (13th Ed.) page 996, Section 41, the rule is stated as follows:

> "Upon a motion to punish a bankrupt for contempt because of his refusal to obey the order of the referee directing him to turn over certain property to his trustee, the only question at issue is the disposition of the property by the bankrupt since the date of the order; the bankrupt is estopped from denying that he was in possession of the property directed to be turned over."

1 Collier on Bankruptcy (13th Ed.), page 993, Section 41, the rule is stated as follows:

> "Property of a bankrupt estate, traced to the recent control or possession of the bankrupt, or a third person is presumed to remain there until he satisfactorily accounts to the court for its disposition or disappearance and that he cannot escape an order for its surrender by simply denying under oath that he has it, or that it is the property of the bankrupt estate."

In re Meier (C. C. A. 8th Cir. 1910), 25 Am. B. R. 272, 275; 182 Fed. 799, in which the facts are that within a week before the filing of the petition in bankruptcy, the treasurer of the bankrupt corporation obtained in his possession in cash over $21,000, all of the available assets of the bankrupt and the night before the petition in bankruptcy was filed, he left the city and did not return until the year following and the president thereafter compelled him to turn over to the trustee $12,500 of such money claimed to be still in his possession, but he not only failed to account for the money so received by him, but refused to answer any question relative to its disposition, merely stating that he had no property of the bankrupt in his possession and to most of the questions asked him dealing with the bankrupt estate, which he did not answer, he returned only the sterotyped answer, that he did not remember.

District Judge Reed in speaking for the court which was heard before Sanborn and Van Devanter, Circuit Judges, stated:

"But the settled rule is that, when property of a bankrupt estate is traced to the possession of one who receives it upon the eve of the bankruptcy of its owner, it is presumed that it remains in his possession or under his control until he satisfactorily accounts to the court of bankruptcy for its disposition or disappearance; that the burden is upon him to satisfactorily so account for it; and that he cannot escape an order for its surrender by simply denying under oath that he has it, or that it is the property of the bankrupt estate. Mueller v. Nugent, 184 U. S. 1, 7 Am. B. R. 224, 22 Sup. Ct. 269, 46 L. Ed. 405; Boyd v. Glucklich (C. C. A., 8th Cir.), 8 Am. B. R. 393, 116 Fed. 135-143, 53 C. C. A. 451; Schweer v. Brown C. C. A., 8th Cir.), 12 Am. B. R. 178, 130 Fed. 328, 64 C. C. A. 574; In re Salkey, 21 Fed. Cas. Nos. 12-253 and 12, 254."

In re Deuell (U. S. D. C. Wes. D. Mo. 1900), 4 Am. B. R. 60, 62; 100 Fed. 633. This case is certified to the court by the referee in bankruptcy for contempt by the bankrupt and based upon the bookkeeping records of

the bankrupt. District Judge Phillips in speaking for the court, said:

> "Will the law permit that a responsible merchant upon whose credit such a large amount of goods had been obtained, may thus shut her eyes, and make no inquiry and learn nothing about her business, ask nothing about the proceeds of the goods which were daily and weekly disappearing from the store, and when called upon by the court to account therefor, or to render some reasonable explanation thereof, to escape the penalties of the bankrupt law by simply saying, 'I have not the goods. I have no money?' She either has the money, or her husband and son embezzled it. They testified before the referee that they did not appropriate or have the money. Under such a state of affairs there can be but one judgment pronounced by the court, and that is that she must account for this money or pay the penalty of her delict. The court, dealing in the most humane manner with this bankrupt, and making every possible allowance for improvident sales and careless business methods, and the loss that could reasonably result therefrom, finds that there must be in her hands, or under her control, at least the sum of $3,000 which she has failed to schedule or turn over to the trustee in bankruptcy, and that she stands in con-

> tempt of the order of the referee to that extent and therefore the order of the court will be that she stand committed to the jail in Bates county, in this district, until she accounts for and turns over to the trustee in bankruptcy herein said sum of $3,000, or the further order of this court."

In re Dittman vs. Michelson (U. S. C. C. A. 3rd Cir. 1922), 48 Am. B. R. 639, 643; 281 Fed. 116, where the evidence showed that five months prior to the bankruptcy, the bankrupt had a deposit of several thousand dollars in a bank where he denied having an account, but that most of such deposit had been withdrawn from the bank to the order of "cash," and the bankrupt refuses to tell of the disposition of such money and an order was made by the referee directing him to pay over such money to his trustee in bankruptcy. Circuit Judge Buffington in speaking for the court said:

> "The orders to turn over being proper, the assets being presumptively in the bankrupt's possession, it will now be for him, in the subsequent proceeding, to show how and when they passed out of his possession. If the fear of incriminating himself prevents him from disclosing what he has done with such assets, that is an unfortunate situation, which the bankrupt has brought on himself; but it nevertheless leaves the case without any explanation by him of what he is now called upon to explain, namely, what he has done with the assets."

In Power vs. Fuhrman, (U. S. C. C. A., 9th Cir. 1915), 34 Am. B. R. 418, 421; 22 Fed. 787, being the only case from the Circuit Court of Appeals from this Circuit that the writer has been able to find excluding the case in the matter of George Shelley supra from the United States District Court for Southern District of California, wherein on petition of trustee, an order was made requiring him and his wife to turn over to the

trustee in bankruptcy the sum of $9,000 found to be in their possession and under their control and to belong to the estate of the bankrupt, to which petition the bankrupt had filed a verified answer and the issues thereby raised having come on regularly for hearing before the referee in bankruptcy. Review of this action of the referee was affirmed by the District Court.

No review of that judgment was sought by either the bankrupt or his wife and not having been complied with, the matter was again brought to the attention of the District Court on a contempt proceeding and resulted in the District Court discharging Ray Furhman, the wife of the bankrupt of contempt. The matter came before the Circuit Court on a petition to revise the decision of the court discharging the order thereby made to show cause why she should not be punished for contempt. Circuit Judge Ross in speaking for the court, which was before Gilbert, Ross and Morrow, Circuit Judges, said:

"The judgment of the court below, confirming the findings and order of the referee, not having been appealed from or otherwise questioned by either of the respondents established that at the date of its entry—July 23, 1913—the money in question was in the actual possession and under the control of the said bankrupt and his said wife, and was then fraudulently concealed and withheld from the creditors of the bankrupt. That judgment placed the legal duty upon both husband and wife of complying with its requirements. That such compliance is enforceable by proceedings in contempt is beyond question. Equally plain is it that the burden is upon the delinquent who claims to be incapable of making the delivery decreed, to prove the fact of such inability."

The above case sustains the appellant's contention that in the Ninth Circuit the burden is upon the delinquent, who claims to be incapable of making the delivery decreed, to prove the fact of such inability. The bank-

rupt made no effort to sustain this burden in the instant case.

In the matter of George Shelley (U. S. D. C. So. D. Calif. 1925), 6 Am. B. R. (N.S.) 491, 494; 8 Fed. (2nd) 878, being the only expression available from the District Courts within the Ninth Circuit and touching upon this point, District Judge Henning said:

> "If that order is not now reviewable by this court, then the only thing to be tried on this proceeding is the question of the disposition of this money by the bankrupt and his sons, since the time of the order made by the referee. At the hearing there was no effort or attempt on the part of the persons charged to do this. Their position simply was that they never received the money in question and are now not in possession of it. The assertion of present inability to turn over, without further explanation, apparently does not furnish any evidence of what has become of it."

The District Court apparently relied on

the case of Power v. Fuhrman, supra, which is also relied on by the appellant in this brief.

In re Magen Co. Inc. (U. S. D. C. Ea. Div. of N. Y. 1926), 8 Am. B. R. (N.S.) 543, 547; 14 Fed. (2nd) 469 was a hearing on an order to show cause why the motion theretofore made and granted to punish one Herbert Magen for contempt should not be considered and vacated. The contempt order was stayed pending the hearing by the Circuit Court of Appeals on a petition to revise the turnover order, on which was based the contempt order. District Judge Inch in speaking for the court, said:

> "An illegal possession and disobedience may be shown by circumstantial evidence, yet before such evidence will justify an imprisonment, possibly for a considerable period, it should be both convincing and exceptionally plain. It therefore comes down to this: This court must now be satisfied beyond a reasonable doubt that Magen is wilfully disobeying the order to turn over. The burden of proof of show that he is so doing rests on the trustee. That burden is met in the first instance by proof that a court by

order has duly found that Magen is in possession of the property, that it belongs to the estate of the bankrupt, and that he has failed to obey the order to turn over. Magen must then offer proof to explain this failure to obey. Otherwise, a wilful disobedience may be reasonably found.

Mere denials or protestations of inability are not proof; they simply raise the issue which calls for proof. Finally, when both sides have rested, if the court is then satisfied, beyond a reasonable doubt, of the present wilful disobedience of Magen, it may imprison him as a punishment. Mueller v. Nugent, 184 U. S. 1, 7 Am. B. R. 224, 22 S. Ct. 269, 46 L. Ed. 405; In re Schlesinger (C. C. A., 2nd Cir.), 4 Am. B. R. 361, 102 F. 117, 42 C. C. A., 207; in re McCormick supra."

In re Magen Co. Inc. (U. S. C. C. A. 2nd Cir. 1925), 7 Am. B. R. (N.S.) 283, 288; 10 Fed. (2nd) 91, wherein the testimony adduced before the referee on application for the turn-over order was based upon an audit of bankrupt's books and records. There was no testimony or findings where concealed prop-

erty could be located and the turn-over order was for the sum of $32,779.74. Circuit Judge Rogers in an exhaustive opinion which is quoted herein at length, in speaking for the court before Rogers, Hough and Manton, Circuit Judges, said among other things:

> "The law relating to turn-over orders is pretty well established in this circuit. In 1900 this court, decided in re Schlesinger, (C. C. A. 2nd Cir.), 4 Am. B. R. 361, 102, F. 117, 42 C. C. A. 207. In that case the referee found no definite property or money in the possession of the bankrupt. He therefore refused to enter a turn-over order. The District Court reversed his decision, inasmuch as it appeared that upwards of $10,000 had been unaccounted for by him. It therefore held that it was still in his possession or control. But to avoid any question of doubt the court fixed the amount to be turned over at $6,500. The case was brought into this court upon a petition to review and the order of the District Court was affirmed. Judge Shipmen, writing for the court, said:
>
> > 'If we had power to review the correctness of the finding that the testimony was such as to satisfy one beyond a reasonable doubt that the money was in the possession or under

the control of the bankrupt, and mindful of the importance of observing caution in the investigation, we should have no hesitation in affirming the finding of fact. It is not denied that clause 13 of section 2 of the Bankrupt Act (Comp. St., Sec. 9586) authorizes the court of bankruptcy to "enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment, or fine and imprisonment," and that disobedience of a lawful order of a referee is punishable by the judge as for a contempt committed before the court of bankruptcy; but it is contended that disobedience of an order to the bankrupt to pay or deliver a sum of money in his possession to his trustee cannot be punished by proceedings in contempt, because the order is for the payment of a debt, and imprisonment for debt has been abolished in the state of New York, and by section 990 of the Revised Statutes (Comp. St., Sec. 1636) no person can be imprisoned for debt by process issuing from the courts of the United States in a state where by its laws imprisonment for debt has been abolished.'

The court disposed of the objection arising from the fact that imprisonment for debt had been abolished by declaring that the order was not for the payment of

a debt, but for the delivery by the bankrupt of the assets of his estate to his trustee in bankruptcy. 'He was not indebted to the trustee. The money was a part of his assets and estate, which had by operation of law become vested in the trustee.'

In 1905 this court decided In re Levy (C. C. A. 2nd Cir.), 15 Am. B. R. 166, 142 F. 442, 73 C. C. A. 558. The question came up on petition to review a turn-over order. At the time of the filing of the involuntary petition in bankruptcy it appeared from the books of the bankrupts that there should have been on hand at the time the petition was filed a balance in goods or cash of $18,921.87. The value of the goods on hand amounted to only $6,000, and the value of goods unaccounted for was $12,921.87. The referee declined to order this amount turned over to the trustee, holding that the showing on the books at most raised an inference that the property was in the hands of the bankrupts. The District Judge refused to confirm the order and said:

> 'The question is whether it is sufficient for the bankrupts to state that they have not the property. If they have not the property, they should tell what they did with it. If they cannot do this, the court would be justified in finding that they still had it. Their books, kept for the very purpose of showing what they have or have not,

> state that they have this balance. The record is their own. If it is not complete, let them complete it. Their own written books, to the effect that they have $12,921.87 is better than their generalization that they have none of it. If it were sufficient for a bankrupt to deny generally, in the face of his own books, the suppression of assets would be unimpeded. Another opportunity should be given the bankrupts to make the necessary explanation and point out with some approximate accuracy the disposition of so large an amount of goods within so short a space of time.'

When the matter went back to the referee the bankrupts failed to make any explanation of what they had done with the property. A turn-over order was made by the referee, the District Court approved, and this court affirmed.

In 1906, in Re Weinred (C. C. A., 2nd Cir.), 16 Am. B. R. 702, 146 F. 243, 76 C. C. A. 609, there was a shortage of assets of $60,000 for which the bankrupts did not satisfactorily account. On their examination they were asked as to certain sums they had drawn out of the bank in cash and which aggregated $18,200 At first they refused to answer questions concerning it, but subsequently gave a story in which they undertook to account for it. District Judge Holt considered the

story as extremely improbable. He said:

> 'It is precisely the kind of story which bankrupts would tell, who had been engaged in the diamond business and had been planning a fraudulent bankruptcy, and had drawn $18,000 in cash just before their bankruptcy, for the purpose of concealing it from their creditors. I cannot avoid the conclusion that their story is an entire fabrication, and that the bankrupts have this money concealed from their creditors, and that they should be ordered to pay it to the trustee.'

And he entered an order directing them to turn over to the trustee $18,200 which they had drawn out of the bank in cash between July 11th and July 20th. The matter came into this court on a petition to revise and it was affirmed.

In 1909 the court decided in Re Stavrahn (C. C. A., 2nd Cir.), 23 Am. B. R. 168, 174 F. 330, 98 C. C. A. 202, 20 Ann. Cas. 888. In that case the doctrine is stated by Judge Lacombe that, if it is shown that the bankrupt was in the actual possession of a particular sum of money a few months before the turn-over order, it was incumbent on him to give some reasonable explanation as to why it was that he did not turn it over in compliance with the order requiring him so to do. In that case his sole averment was:

> 'That the reason your dependent has not turned over said sum is because he has no such sum in his possession or under his control, directly or indirectly, and has no means whatsoever of obtaining said sum of money.'

And this court said that his averment 'is too bald and indefinite to have any persuasive force.' * * * *

Our attention is also called to In re Redbord (C. C. A., 2d Cir.) 5 Am. B. R. (N.S.) 357, 3 F. (2d) 793, 794, where this court, speaking through the present writer, said:

> 'To warrant the order to turn over the money, it must appear not only that the money to be turned over is part of the bankrupt's estate, but that the money is in his possession or under his control at the time the order to turn it over is made.'

We do not doubt the correctness of the statement quoted, and it is evident that the referee and the District Judge were satisfied that what the respondent is directed to turn over in the order sought to be revised is part of the bankrupt's estate. If there is in this record no evidence upon which that conclusion can be based it would be the duty of this court to reverse the order. But this court thinks

that there is such evidence. And if it so thinks there is nothing for us to do but to affirm the order.

In United States v. Moore (C. C. A., 2nd Cir.) 2 Am. B. R. (N.S.) 699, 294 F. 852, 856, this court, speaking of an order punishing for contempt one who had failed to comply with a turn-over order said that 'the court should be satisfied of the present ability of the bankrupt to comply with it.' That, too, is undoubtedly true. But it is not to be overlooked that when the property is traced into the bankrupt's possession and he fails to produce it, or satisfactorily to explain what became of it, the presumption is reasonable, and the court may infer that it still is in his possession or under his control.

As this case is here on petition to revise, the court's duty is confined to inquiring whether any error of law was committed in the court below in affirming the turn-over order. If there was no evidence upon which the order could be based this court's duty is plain and the order must be reversed. But on petition to revise the court is limited to matters of law. The facts are for the District Court. This court will not look further into the facts as found than to ascertain whether they are sustained by any substantial evidence. It is certain that in this case there was competent evidence from which the

referee and the District Judge were entitled to find that the petitioner had and still has in his possession, or under his control, assets belonging to the estate in bankruptcy, and being convinced of that fact we must hold that the turn-over was legally made.

We need not set forth any more fully than we have done what the evidence is. And from what has been already said it sufficiently appears that the inference which was drawn from that evidence is one which the law recognizes and upholds. The petitioner has had the benefit in this court of learned, able and distinguished counsel. He seems to us to have left nothing unsaid which could be fairly said on the petitoner's behalf. We have carefully examined the record. And we fully agree with the petitioner's counsel that a turn-over order should not be granted except upon the following conditions.

1. Clear proof that the title to the property sought is in the trustee, or is part of the bankrupt estate.

2. That the bankrupt, or the person directed by such order, at the date of the bankruptcy, and when the order is made, had in his possession or control, the money or property to be turned over, which had been kept and concealed from the trustee.

3. Unscheduled property traced to one, who received it before the filing of the bankruptcy petition, may be presumed to continue in such possession, until a credible explanation is made, showing what has become of such property.

The sole difficulty in this case is that in the opinion of the court below this petitioner has not given a credible explanation of what has become of the property which is a part of the bankrupt estate, and which is shown to have been in the petitioner's possession or under his control.

The order is affirmed, and the petition to revise is denied."

In re Reardon v. Pensoneau (U. S. C. C. A. 8th Cir. 1927), 9 Am. B. R. (N.S.) 519, 520; 18 Fed. (2nd) 244, is another proceeding to punish a bankrupt for failing to obey an order to turn over property.

Circuit Judge Lewis in speaking for the court, said:

"Pensoneau was adjudged bankrupt January 28, 1926, on his petition. He gave

his occupation as 'fruit and produce' and carried on a retail business of selling fruits and vegetables at 1213 North Third St., St. Louis until he quit early in November, 1925. On March 1, 1926, Reardon, as trustee for the bankrupt estate, filed his petition with the referee charging that the bankrupt had in his possession and control $8,000 as the proceeds from the sale of his stock of fruits, produce and vegetables that said sum was assets of the bankrupt estate, and prayed for an order on Pensoneau that he deliver the money to the trustee. A hearing was had by the referee before whom the bankrupt appeared and testified, and was represented by counsel. Having heard the testimony, the referee found 'That between October 19, 1925, and October 28, 1925, the bankrupt had purchased from 14 different concerns, now his creditors, goods, wares and merchandise, consisting of apples, potatoes, grapes, cabbages, celery and onions of the total value of or in the total sum of $7,577.68,' that the bankrupt admitted he received in cash for his stock between October 19 and 28 about $8,000. He accounted for $50 cash in his schedule, which was all the trustee had received. He claimed that he had lost the money in gambling. The referee after a full review of the testimony found that bankrupt then had in his possession and under his control $6,900 and entered an order that

he turn that sum over to the trustee as assets of the bankrupt estate.

By petition the bankrupt caused the action of the referee to be certified to the bankruptcy court for review where the action of the referee was, after hearing, fully confirmed in all respects, and an order was entered by the court on June 7, 1926, that Pensoneau within 10 days from that date turn over to Reardon, trustee, $6,900 in money. Pensoneau failed to comply with the order, and was cited to show cause, if any he had, why he should not be punished for contempt. He came in and the court discharged him by an order of date September 13, 1926, on the ground, as herein appears:

> 'The court doth further find that such petitioner for committment in contempt, Joseph M. Reardon, trustee in bankruptcy, has failed to establish that respondent, August Pensoneau, bankrupt herein, is at this time financially able to comply with said order of June 7, 1926, and deliver to his said trustee in bankruptcy, such concealed assets in the sum of $6,900. It is therefore by reason of the finding as last aforesaid, ordered and adjudged that the said petition of Joseph M. Reardon, trustee in bankruptcy herein, for the committment in contempt of said bankrupt, August Pensoneau, for fail-

ure to comply with such order of the court be, and such petition is hereby denied, and that said bankrupt be, and he is hereby discharged in and under such contempt proceedings.'

It will be observed that the court put the burden on the trustee, not on the bankrupt. This is the error in law of which complaint is made, and we think it well taken. The order of the referee and that of the court on June 7 each found that Pensoneau had the money in his possession or under his control when the referee's order was made in April. In the circumstances the trustee could not be expected to know what had happened since the orders were made. Pensoneau, of course, knew what he had done with the $6,900. The burden was on him, and if he could not convince the court that he had lost possession and control under circumstances which he could not prevent, he should have been held in contempt. On the facts it was twice adjudged that he had the $6,900 on a named date, and on that date, the referee ordered him to turn over to the trustee. Those were not perfunctory orders. No steps have been taken to vacate them, and we know of no reason to ignore them as not valid and binding. They establish the bankrupt's possession and control on the day the referee's order was made. The burden was on him to show what disposition had been made of

the $6,900. Until that showing is made relieving him of an intentional loss of its possession and control, it must be presumed that he still has it. Remington on Bankruptcy, 3rd Ed., Sec. 2428; In re Stavrahn (C. C. A. 2nd Cir.) 23 Am. B. R. 168, 174 F. 330; In re Weber Co. (C. C. A. 2d Cir.) 29 Am. B. R. 217, 200 F. 404; Power v. Fuhrman (C. C. A. 9th Cir.) 34 Am. B. R. 418, 220 F. 787; In re Meier (C. C. A. 8th Cir.) 25 Am. B. R. 272, 182 F. 799; Good v. Kane (C. C. A. 8th Cir.) 32 Am. B. R. 19, 211 F. 956. The two cases cited brought under consideration the question of proof in support of a turn-over order. They did not involve the issue we have here, but they are in point on the presumption that possession continues in one shown to have recently held personal chattels until he removes that presumption, and that the burden is on him to do so; and that a bankrupt can not escape an order for the surrender of property belonging to his estate 'by simply denying under oath that he has it.' See also, In re Graning (C. C. A. 2nd Cir.) 36 Am. B. R. 162, 229 F. 370.

When the bankrupt came in on the citation for contempt a hearing was had. The trustee introduced the referee's order of April 21, 1926, which directed the bankrupt to deliver the $6,900 to the trustee; also the court's order affirming the referee's order, and the trustee then testified

that none of the money had been delivered to him.

Thereupon the bankrupt testified that he did not then have the $6,900 and did not have it when the referee's order was made. Objection and exception were taken to the last statement. Over objection and exception of the trustee bankrupt was permitted to offer transcript of all evidence introduced before the referee on which the turn-over order was made. From what has been said it follows that these objections should have been sustained. The bankrupt was presumed to still have the $6,900 found by the court to be in his possession or control on April 21 preceding. His mere denial under oath did not overthrow the presumption. On the case as it stood he should have been held in contempt and punished. An order may be here entered directing the bankruptcy court to set aside the order of September 13, 1926, discharging the bankrupt and to take such further action against the bankrupt on the citation for contempt as to the court may seem meet and proper and in accord with the principles above stated."

The very last expression that this writer has been able to locate bearing upon the question at issue is found in the matter of Oriel and Confino (U. S. C. C. A. 2nd Cir. 1928), 11 Am. B. R. (N.S.) 363, 368; 23 Fed. (2nd) 409, wherein Circuit Judge Manton, in speaking for the court, said:

> "The regularity, correctness, or validity of the order disobeyed cannot be examined in this proceeding to punish. Even if it was improvidently granted or irregularly obtained, it must nevertheless be respected until it is annulled by the proper authority. Cape May R. R. Co. v. Johnson, 35 N. J. Eq. 422. The only inquiry is whether the court granting the injunction had jurisdiction of the subject-matter and of the parties, and whether the order has been violated. Therefore it was not incumbent upon the appellee in this proceeding which we hold to be a civil contempt, to establish beyond a reasonable doubt that they had the books and continued in their possession, and are wilfully refusing to turn them over. That was a matter for determination on the motion in the turn-over proceeding. In that proceeding it was determined that the appellants were able to deliver up the books in question and that they had them either in their possession or under their

> control. No appeal was taken from the order. They must be committed until they can satisfy the court that they should be purged of the contempt committed, either by compliance with the order or some remedial relief be accepted, or otherwise satisfy the court that their committment should be lifted and they be released. Kirsner v. Taliaferro (C. C. A., 4th Cir.) 29 Am. B. R. 832, 202 F. 51."

From the cases cited, the rule of law is definitely deduced that upon a contempt proceeding where the court has before it the findings and order of the referee which stand as a final order that the burden is upon the bankrupt to offer positive proof to explain to the district court the reason for his failure to obey the valid order of the referee.

In the instant case the record before the court was that the bankrupt had the sum of $5,377.37 in her possession. Further that she did not pay this money over to her trustee as expressly ordered and required. The mere

statement by the bankrupt in her answer to the rule to show cause "that she is wholly and completely financially embarrassed and has been for some time past, physically disabled" was as the cases indicate not proof sufficient to justify her being purged of contempt.

It was accordingly error for the District Court to sanction the disobedience of the bankrupt and purge her of her contempt.

CONCLUSION

In view of the simple questions involved, namely, the District's Court misinterpretation of the findings and the court's examination into the same and the order based thereon, which matter was before the court on a contempt proceeding and not on a review, and the purging of the bankrupt from said final order upon which there was no attempt of any kind made to justify her disobedience has led the appellant in this brief to forego any detailed argument of his own and to rest

the matter almost entirely on the decisions as rendered by the various Circuit Courts of Appeal that have passed upon this question. The appellant is impressed with the force of the reasoning that if the findings and order were not justified or invalid the way to correct the same was by review and not by disobedience. When the matter came before the District Court on a contempt proceeding, the question for the Court was,—is the bankrupt in contempt of the referee's order and not is the order of the referee valid.

Respectfully submitted,

Coan & Rosenberg
Ralph A. Coan
Abe Eugene Rosenberg

COAN & ROSENBERG,
RALPH A. COAN
ABE EUGENE ROSENBERG.
Attorneys for Appellant.